

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

TERRY BIRMINGHAM,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 16-00965-CV-W-ODS
	)	
RONDA J. PASH, Warden,	)	
Crossroads Correctional Center,	)	
	)	
Respondent.	)	

ORDER (1) DENYING PETITIONER'S SECOND  
FORMAL REQUEST FOR A CERTIFICATE OF APPEALABILITY,  
(2) CONSTRUING REQUEST AS MOTION TO REOPEN TIME TO FILE APPEAL, AND  
(3) DENYING PETITIONER'S REQUEST TO REOPEN TIME TO FILE APPEAL

On April 3, 2017, the Court denied Petitioner's request for a writ of habeas corpus, and denied the issuance of a certificate of appealability, finding Petitioner failed to show a reasonable jurist would find the Court's ruling on the constitutional claims debatable or wrong. Doc. #14, at 13-14 (citations omitted). On June 19, 2017, Petitioner filed a request for a certificate of appealability. Doc. #17. The Court denied that motion, citing its April 3, 2017 Order. Doc. #18.

On August 9, 2017, Petitioner filed another request for a certificate of appealability. Doc. #19.<sup>1</sup> The Court denies Petitioner's second request for a certificate of appealability for the same reasons identified in its April 3, 2017 Order, but construes Petitioner's filing as a request to reopen the time to file an appeal.<sup>2</sup>

Pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure, "[t]he district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered" but only if three requirements are met. Fed. R. App. P.

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<sup>1</sup> Petitioner sent his request to the Eighth Circuit Court of Appeals. Because Petitioner has not appealed this Court's decision, the Eighth Circuit sent Petitioner's request to this Court for filing and consideration. Doc. #19-2.

<sup>2</sup> To the extent Petitioner's first request for certificate of appealability could have been construed as a motion to reopen the time to file an appeal, such a request is denied for the same reasons his second request for certificate of appealability (construed as a motion to reopen) is denied.

4(a)(6). The first of the three requirements has not been met by Petitioner in that he has not established he did not receive notice of the Court's April 3, 2017 Order within twenty-one days after it was entered. Fed. R. App. P. 4(a)(6)(A). Tellingly, Petitioner mentions the Court's April 3, 2017 Order in his filing received by the Court on June 19, 2017, which indicates Petitioner received notice of the Court's Order. Doc. #17. Because Petitioner has failed to establish the requirements set forth in Rule 4(a)(6)(A)-(C), the Court denies Petitioner's request to reopen the time to file an appeal.

The Clerk of the Court is directed to mail a copy of this Order to the following:

Terry Birmingham, #501767  
Crossroads Correctional Center 4D-157  
1115 East Pence Road  
Cameron, Missouri 64429

IT IS SO ORDERED.

DATE: August 23, 2017

/s/ Ortrie D. Smith  
ORTRIE D. SMITH, SENIOR JUDGE  
UNITED STATES DISTRICT COURT